

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1370-PWS-E **TCEQ ID:** RN101189058 **CASE NO.:** 34487
RESPONDENT NAME: David E. Shivers dba Shan D Water Supply

Page 1 of 2

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Shan D Water Supply, 15.2 miles east of Henderson on the south side of Hwy 43, Rusk County</p> <p>TYPE OF OPERATION: Public water supply</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on December 27, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Epifanio Villarreal, Enforcement Division, Enforcement Team 2, MC R-13, (210) 403-4033 San Antonio Regional Office; ; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. David Shivers, Owner, Shan D Water Supply, 465 Desires Trial, Tatum, Texas 75691 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: August 5, 2007</p> <p>Date of NOV/NOE Relating to this Case: November 8, 2006, January 30, 2007, and May 18, 2007 (NOVs); August 7, 2007 (NOE)</p> <p>Background Facts: This was a routine record review investigation. One violation was documented.</p> <p>WATER</p> <p>Failure to comply with the maximum contaminant level ("MCL") of 0.080 milligrams per liter ("mg/L") for Total Trihalomethanes ("TTHM"), based on a running annual average. Specifically, the running annual average concentrations for TTHM were 0.087 mg/L for the third quarter of 2006, 0.089 mg/L for the fourth quarter of 2006, and 0.097 mg/L for the first quarter of 2007 [30 TEX. ADMIN. CODE § 290.113(f)(4) and TEX. HEALTH & SAFETY CODE § 341.0315(c)].</p>	<p>Total Assessed: \$354</p> <p>Total Deferred: \$0 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$354</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Orders Justification:</p> <p>A Findings Order was issued because of three or more repeated enforcement actions within a five year period for the same violations.</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 365 days after the effective date of this Agreed Order, return to compliance with the running annual average MCL for TTHM; and</p> <p>b. Within 380 days after the effective date of this Agreed Order, submit written certification to demonstrate compliance with Ordering Provision a.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

DATES	Assigned	20-Aug-2007	Screening	22-Aug-2007	EPA Due	1-Jun-2007
	PCW	22-Aug-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	David E. Shivers dba Shan D Water Supply
Reg. Ent. Ref. No.	RN101189058
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	34487	No. of Violations	1
Docket No.	2007-1370-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Enf. Coordinator	Epifanio Villarreal
Multi-Media		EC's Team	Enforcement Team 2
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$250**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **17% Enhancement** **Subtotals 2, 3, & 7** **\$42**

Notes
The penalty enhancement is due to three prior Notices of Violation ("NOVs") containing violations that are the same as or similar to the violations in the current enforcement action and one dissimilar prior NOV.

Culpability **Yes** **25% Enhancement** **Subtotal 4** **\$62**

Notes
The Respondent was issued alert letters for total trihalomethane ("TTHM") exceedances on September 7, 2004, July 11, 2005, March 14, 2006, and April 18, 2006.

Good Faith Effort to Comply **0% Reduction** **Subtotal 5** **\$0**

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes
The Respondent does not meet the good faith criteria.

Total EB Amounts **\$467** **0% Enhancement*** **Subtotal 6** **\$0**
Approx. Cost of Compliance **\$2,500** ***Capped at the Total EB \$ Amount**

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$354**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount **\$354**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$354**

DEFERRAL **0% Reduction** **Adjustment** **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

No deferral is recommended for Findings Orders.

PAYABLE PENALTY **\$354**

Screening Date 22-Aug-2007

Docket No. 2007-1370-PWS-E

PCW

Respondent David E. Shivers dba Shan D Water Supply

Policy Revision 2 (September 2002)

Case ID No. 34487

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN101189058

Media [Statute] Public Water Supply

Enf. Coordinator Epifanio Villarreal

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	3	15%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 17%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The penalty enhancement is due to three prior Notices of Violation ("NOVs") containing violations that are the same as or similar to the violations in the current enforcement action and one dissimilar prior NOV.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 17%

Screening Date 22-Aug-2007		Docket No. 2007-1370-PWS-E		PCW	
Respondent David E. Shivers dba Shan D Water Supply		<small>Policy Revision 2 (September 2002)</small>			
Case ID No. 34487		<small>PCW Revision June 26, 2007</small>			
Reg. Ent. Reference No. RN101189058					
Media [Statute] Public Water Supply					
Enf. Coordinator Epifanio Villarreal					
Violation Number		<input type="text" value="1"/>			
Rule Cite(s)		<input type="text" value="30 Tex. Admin. Code § 290.113(f)(4) and Tex. Health & Safety Code § 341.0315(c)"/>			
Violation Description		<input ("mg="" 0.080="" 0.087="" 0.089="" 0.097="" 2006,="" 2007."="" a="" and="" annual="" average="" average.="" based="" concentrations="" first="" for="" fourth="" l="" l")="" liter="" mcl")="" mg="" milligrams="" of="" on="" per="" quarter="" running="" specifically,="" the="" third="" tthm="" tthm,="" type="text" value="Failed to comply with the maximum contaminant level (" were=""/>			
Base Penalty					<input type="text" value="\$1,000"/>
>> Environmental, Property and Human Health Matrix					
OR	Release				
	Harm				
	Major	Moderate	Minor		
	Actual	<input type="text" value=""/>	<input type="text" value="x"/>	<input type="text" value=""/>	
	Potential	<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>	
Percent					<input type="text" value="25%"/>
>> Programmatic Matrix					
Falsification		Major	Moderate	Minor	
<input type="text" value=""/>		<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>	
Percent					<input type="text" value="0%"/>
Matrix Notes		<input type="text" value="Exceeding the MCL for TTHM exposes customers of the water supply to significant amounts of contaminants that do not exceed levels that are protective of human health."/>			
Adjustment					<input type="text" value="\$750"/>
					<input type="text" value="\$250"/>
Violation Events					
Number of Violation Events		<input type="text" value="1"/>	Number of violation days		
		<input type="text" value="273"/>			
<small>mark only one with an x</small>	daily	<input type="text" value=""/>	Violation Base Penalty <input type="text" value="\$250"/>		
	monthly	<input type="text" value=""/>			
	quarterly	<input type="text" value=""/>			
	semiannual	<input type="text" value=""/>			
	annual	<input type="text" value="x"/>			
	single event	<input type="text" value=""/>			
One annual event is recommended.					
Economic Benefit (EB) for this violation			Statutory Limit Test		
Estimated EB Amount		<input type="text" value="\$467"/>	Violation Final Penalty Total		<input type="text" value="\$354"/>
This violation Final Assessed Penalty (adjusted for limits)					<input type="text" value="\$354"/>

Economic Benefit Worksheet

Respondent David E. Shivers dba Shan D Water Supply
Case ID No. 34487
Reg. Ent. Reference No. RN101189058
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$2,500	1-Jul-2006	28-Feb-2009	2.7	\$22	\$444	\$467
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The delayed costs include the amount to implement an alternative method of disinfection, calculated from the first day of noncompliance to the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,500

TOTAL

\$467

Compliance History

Customer/Respondent/Owner-Operator:	CN600635536	SHIVERS, DAVID E	Classification:	Rating:
Regulated Entity:	RN101189058	SHAN D WATER SUPPLY	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION		2010042
	WATER LICENSING	LICENSE		2010042
Location:	LOCATED 15.2 MI E OF HENDERSON ON S SIDE OF HWY 43 IN RUSK CO			
TCEQ Region:	REGION 05 - TYLER			
Date Compliance History Prepared:	August 22, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	August 22, 2002 to August 22, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Epi Villarreal		Phone:	210-403-4033

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A

B. Any criminal convictions of the state of Texas and the federal government.
N/A

C. Chronic excessive emissions events.
N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

- 1 11/17/2003 (146736)
- 2 11/08/2006 (570875)
- 3 01/30/2007 (571353)
- 4 02/09/2007 (537919)
- 5 05/18/2007 (571360)
- 6 08/14/2007 (571482)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 11/08/2006 (570875)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)

Description: Violated the maximum contaminant level for Trihalomethanes during the third quarter of 2006.

Date: 01/30/2007 (571353)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)

Description: Violated the maximum contaminant level for Trihalomethanes during the fourth quarter of 2006.

Date: 02/12/2007 (537919)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)
Description: Failure to provide for commission review an approved sanitary control easement, ordinance, deed or exception letter.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(i)
Description: Failure to adopt a customer service agreement.

Date: 05/18/2007 (571360)

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
Description: Violated the maximum contaminant level for Trihalomethanes during the first quarter of 2007.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
DAVID E. SHIVERS DBA SHAN D
WATER SUPPLY
RN101189058**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-1370-PWS-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding David E. Shivers dba Shan D Water Supply ("Mr. Shivers") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. Shivers presented this agreement to the Commission.

Mr. Shivers understands that he has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Mr. Shivers agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon Mr. Shivers.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. Mr. Shivers owns and operates a public water supply located 15.2 miles east of Henderson on the south side of Highway 43, Rusk County, Texas (the "Facility") that has approximately 65 service connections and serves at least 25 people per day for at least 60 days per year.

2. During a record review conducted on August 5, 2007, TCEQ staff documented Mr. Shivers did not comply with the maximum contaminant level ("MCL") of 0.080 milligrams per liter ("mg/L") for total trihalomethane ("TTHM"), based on a running annual average. Specifically, the running annual average concentrations for TTHM were 0.087 mg/L for the third quarter of 2006, 0.089 mg/L for the fourth quarter of 2006, and 0.097 mg/L for the first quarter of 2007.
3. Mr. Shivers received notices of the violations dated November 8, 2007, January 30, 2007, May 18, 2007, and August 7, 2007.

II. CONCLUSIONS OF LAW

1. Mr. Shivers is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 2, Mr. Shivers failed to comply with the MCL of 0.080 mg/L for TTHM, based on a running annual average, in violation of 30 TEX. ADMIN. CODE § 290.113(f)(4) and TEX. HEALTH & SAFETY CODE § 341.0315(c).
3. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Mr. Shivers for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Three Hundred Fifty-Four Dollars (\$354) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). Mr. Shivers has paid the Three Hundred Fifty-Four Dollar (\$354) administrative penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Shivers is assessed an administrative penalty in the amount of Three Hundred Fifty-Four Dollars (\$354) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and Mr. Shivers' compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: David E. Shivers dba Shan D Water Supply, Docket No. 2007-1370-PWS-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Mr. Shivers shall undertake the following technical requirements:

- a. Within 365 days after the effective date of this Agreed Order, return to compliance with the running annual average MCL for TTHM, in accordance with 30 TEX. ADMIN. CODE § 290.113; and
- b. Within 380 days after the effective date of this Agreed Order, submit written certification to demonstrate compliance with Ordering Provision No. 2.a. as described below:

The certification shall be notarized by the State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

DBP Compliance Coordinator
Water Supply Division/PDWS, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Shivers. Mr. Shivers is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Shivers shall be made in writing to the Executive Director. Extensions are not effective until Mr. Shivers receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Shivers if the Executive Director determines that Mr. Shivers has not complied with one or more of the terms or conditions in this Agreed Order.
6. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
7. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Shivers in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
9. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. Sullivan
For the Executive Director

12/11/07
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of David E. Shivers dba Shan D Water Supply. I am authorized to agree to the attached Agreed Order on behalf of David E. Shivers dba Shan D Water Supply, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, David E. Shivers dba Shan D Water Supply waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

David E. Shivers
Signature

10-12-07
Date

DAVID E. SHIVERS
Name (Printed or typed)
Authorized Representative of
David E. Shivers dba Shan D Water Supply

OWNER
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

